

REMARKS

The Applicants appreciate the continued thorough examination of the subject application. Claims 15, 18-21 and 24-28 are pending in the application for further examination. Applicants respectfully submit that the claim amendments and the remarks below overcome the new grounds for rejection, and therefore, entry of this amendment under Section 116 is respectfully requested.

Response to Claim Rejections Under 35 U.S.C. 103(a)

Rejection of Claims 15, 18, 20, 21, 24, 26 and 28

Claims 15, 18, 20, 21, 24, 26 and 28 have been rejected under 35 U.S.C. 103(a) as unpatentable over Daffner (U. S. Patent Application Publication 2002/0120671) in view of Greenlee (U.S. Patent Application Publication 2004/0268176).

Rejection of Claims 19 and 25

Claims 19 and 25 have been rejected under 35 U.S.C. 103(a) as unpatentable over Daffner in view of Greenlee as applied to claims 15 and 21 and further in view of Dutta (U.S. Patent Application Publication 2002/0124056).

Rejection of Claim 27

Claim 27 has been rejected under 35 U.S.C. 103(a) as unpatentable over Daffner in view of Greenlee as applied to claim 21 and further in view of Moran (U.S. Patent Application Publication 2003/0083941).

Remarks as to the Allowability of Claims 15, 18, 19 and 20

Claim 15 has been amended as set forth in the claim amendments submitted herewith.

The Daffner reference relates to a system and process for data communications between a system unit 8 and in-building facilities (heating and air conditioning systems, for example) 2, 3 and 4. A system unit 8 remotely monitors and controls the facilities through a PSTN/Internet (see Daffner Figure 1).

In paragraph 6 of the Office Communication the Examiner suggests that Daffner's element 7 (a modem, see Figure 1) discloses the Applicants' service access unit as set forth in claim 15.

Daffner's modem 7 is a simple "dumb" communications device, i.e., an intermediate or pass-through communications device. It resides on a communications path and converts digital or analog signals in a first format, as received from a data source, to a second format suitable for conveyance of the information over the communications path. Originally, modems at the sending end performed a digital-to-analog conversion for sending the digital data from the data source (e.g., computer) over the analog public switched telephone network to another modem at the receiving end where the received analog signals were converted back to digital form for use by a receiving computer. Today, the term modem is used to commonly refer to any communications pass-through device that converts data in one format to a different format suitable for conveyance over a communications medium. For example, a cable modem converts the data from the computer into the proper format for carrying over the cable network.

To send data from it, the modem must operate with an element that serves as the data source, such as a computer or server (the latter is in fact simply a computer operating to provide services to a client, thus the name "server"). When a modem receives data it must pass the data to an element that can use the data to perform a useful function. Again, typically a computer is connected to the modem to receive data that has been received by the modem.

To justify combining Daffner and Greenlee and replacing Daffner's modem with Greenlee's server, the Examiner argues, "it would have been obvious to replace the modem [of Daffner] with a server [of Greenlee] because the benefits provided, i.e., to provide a pool of shared resources and backup." But the Examiner fails to convincingly explain how this replacement can be functionally accomplished. The benefits cited by Examiner Jiang as derivable from the combination may be persuasive, but how does one accomplish the replacement. Why is a server an obvious substitute for a modem? This is not a simple obviousness case where one replaces element A with a replaceable or like element B, where both A and B have the same functionality. It is not a situation where it would be obvious to replace a hard drive storage element with a RAM storage element. Both operate to store data and so under

the obviousness guidelines this would appear to be a permitted substitution. But in the instant situation, a modem and a server are not like-replaceable elements. One is not an obvious substitute for the other. They have substantially different operations and functionality. A server (computer) requires a modem (or another communications interfacing device) to access a communications network. They have different operational characteristics and perform different functions—one cannot be replaced by the other. In fact, the server subsumes the modem.

Additionally, while Daffner's modem 7 is connected to Daffner's bus system 5, Greenlee's server is not connected to the field bus (bus system) as the Applicants now claim. In fact, there is no field bus present in Greenlee. The omission of this claim limitation lends further support to the Applicants' remarks that Daffner and Greenlee cannot be combined.

In *KSR International Co. v. Telefax, Inc.*, 127 S.Ct. 1727 (2007), the Court declared that "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." Instead, "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in *KSR*). Specifically, "it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the new claimed invention does." Here Examiner Jiang has merely combined two disparate references, albeit both related to communications subject matter, using the secondary Greenlee reference to fill gaps in the primary Daffner reference. But the reasons offered for the combination are merely conclusory (i.e., focusing on the benefits provided), a rationale the Court stated was insufficient to support the combination.

For all of these reasons, it is suggested that claim 15 is allowable over the cited Daffner/Greenlee combination.

Dependent claims 18, 19 and 20 are considered to be in allowable condition due to their dependency from claim 15, which is believed to be allowable for the reasons set forth above. Additionally, claims 18, 19 and 20 set forth other patentable features of the present invention.

Remarks as to the Allowability of Claims 21, 24, 25, 26 and 27

Independent claim 21 is a method claim that has been amended in a similar manner to claim 15. The remarks presented above also apply to claim 21 and the claim is therefore considered allowable over the cited art.

Dependent claims 24 – 27 are considered to be in allowable condition due to their dependency from claim 21. These claims also set forth other patentable features of the present invention.

Remarks as to the Allowability of Claim 28

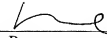
Independent claim 28 is an apparatus claim to the service access unit. Claim 28 has been amended in a similar manner to claim 15 and the remarks presented above also apply to claim 28. Claim 28 is therefore considered allowable over the cited art.

CONCLUSION

Since the proposed amendments overcome the current claim rejections, issuance of a Notice of Allowance for all pending claims is respectfully requested. The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

Dated: 04/14/10

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